

WARRANTLESS SEARCHES

CLASSIFYING POLICE-CITIZEN INTERACTION

Overstreet v. State, 724 N.E.2d 661 (Ind. Ct. App. 2000), *reh'g denied*

- Consensual Encounter – casual and brief inquiry of a citizen that involves neither an arrest nor a stop.
So long as the person questioned is free to disregard a police officer's questions and walk away, there has been no intrusion upon the person's liberty as to require some particularized and objective justification for the interaction.
- Investigative Detention
Law enforcement officer without warrant or probable cause may briefly detain an individual for investigatory purposes, if based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot."
- Probable Cause to Arrest
Facts and circumstances within the knowledge of the officer are sufficient to warrant belief by a person of reasonable caution that an offense has been committed and that the person to be arrested committed the offense.
- Period of detention at time of traffic stop should only be long enough to get vital information and issue a citation.
- To detain for a longer period of time there must be other circumstances justifying that prolonged detention.
- Factors to consider in determining whether an encounter is consensual or investigatory include:
 - Threatening presence of several law enforcement officers;
 - Display of weapon(s) by police officer(s);
 - Physical touching of the citizen by the police officer;
 - Use of language or tone of voice indicating that compliance with the officer's request might be compelled.
- Overstreet was not stopped. (He was in a gas station parking lot using an air hose.) The officer simply questioned him about his earlier actions at a mail box. The Court of Appeals concluded that this was nothing more than a consensual encounter. Therefore, there was no Fourth Amendment implication.

CONSENSUAL ENCOUNTERS

Cochran v. State, 843 N.E.2d 980 (Ind. Ct. App. 3/17/06)

- *Overstreet* levels of police–citizen interaction were reviewed in this case.
- The Fourth Amendment is not implicated when interaction constitutes a consensual encounter.
- The Fourth Amendment permits, without a warrant or probable cause, brief detention of an individual for investigatory purposes. Detention must be based upon specific and articulable facts known to the officer. The officer must have reasonable suspicion that “criminal activity may be afoot.”
- A seizure does not occur simply because a police officer approaches an individual and asks a few questions.
- In the ordinary course of police investigation, an officer is free to ask a person for identification without implicating the Fourth Amendment.
- If a person refuses to answer an officer’s request for identification, and the police officer then uses more intimidating means of questioning, such that a reasonable person would not have believed he or she was free to leave, a Fourth Amendment seizure has occurred. In such a circumstance, some minimal level of objective justification is required to validate the detention or seizure.
- Whether a defendant has been “seized” when a police officer asks him to identify himself is an objective question. It is irrelevant whether the defendant felt seized or whether the officer thought he might have asked the defendant to stop if he had started to walk away.
- In this case, the Defendant’s Fourth Amendment rights were not violated when the officer requested identification.
- Whether a defendant’s rights guaranteed by Article 1, Section 11 of the Indiana Constitution have been violated, requires a review of the “totality of the circumstances.”
- A totality of the circumstances review requires consideration of both the degree of intrusion into the subject’s ordinary activities and the basis upon which the officer selected the subject of the search or seizure.
- Reasonableness of the search or seizure under Indiana Constitutional analysis turns on the balance of:
 - The degree of concern, suspicion, or knowledge that a violation has occurred;
 - The degree of intrusion the method of the search or seizure imposes on the citizen’s ordinary activities; and
 - The extent of law enforcement needs.
- The action by the law enforcement officer in this case was deemed reasonable. No violation of the Indiana Constitution was found to have occurred.

State v. Lefevers, 844 N.E.2d 508 (Ind. Ct. App. 3/27/06), *trans. denied*

- For Fourth Amendment purposes, a person is seized only when, by means of physical force or a show of authority, his freedom of movement is restricted.
- The mere fact that a police officer approaches a defendant and begins talking to him does not constitute a seizure.
- Although it is conceivable that at some point in the police officer's questioning, Lefevers was seized within the meaning of the Fourth Amendment, the earliest point at which this could have occurred was when the officer asked if she would submit to a breath test and requested that she exit her car. At that point, the officer had obtained enough information to establish reasonable suspicion that the defendant had been driving while intoxicated and the officer was, therefore, justified in further detaining the defendant.
- The defendant's Fourth Amendment rights were not violated.
- A determination of whether a defendant's rights under the Indiana Constitution have been violated turns on a determination of "reasonableness".
- Both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure must be evaluated.
- Reasonableness of a search or seizure turns on the balance of:
 - 1.) The degree of concern, suspicion, or knowledge that a violation has occurred;
 - 2.) The degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and
 - 3.) The extent of law enforcement needs.
- The officer's decision to approach the defendant in this case, was based upon an anonymous tip reporting that Lefevers was operating a vehicle while intoxicated. Such information would not have justified any forcible action by the officer to stop or detain the defendant, but the officer did not engage in any such action.
- The officer acted reasonably and in a limited fashion in approaching Lefevers after she had stopped in a public place.
- The officer's observations and the anonymous tip, taken together, permitted the officer to continue his investigation into whether the Defendant had been operating her vehicle while intoxicated.
- The Court of Appeals determined that the actions of the officer were reasonable.
- No violation of the Defendant's rights under the Indiana Constitution occurred.

Scott v. State, 855 N.E.2d 1068 (Ind. Ct. App. 11/3/06)

- The validity of a stop is evaluated by a review of the totality of the circumstances.

- In this case, the property upon which the defendant was confronted by law enforcement was private property owned by the Evansville Housing Authority.
- Contrary to the right an individual has to remain free from intrusion in public places, those same rights do not carry over onto private property.
- The EHA had posted several “No Trespassing” signs throughout the property on which the defendant was found.
- The Evansville police officers who stopped the defendant were under contract with EHA and had the right, pursuant to that contract, to stop an individual standing on EHA property and to inquire about the person’s interest in being on the property on which they stood.
- In that the officers in this case were acting as agents of the property owner, on private property, the Fourth Amendment was not implicated in the stop.
- The Court of Appeals held that the trial court did not err in admitting evidence resulting from the stop and subsequent arrest of the defendant.

INVESTIGATIVE DETENTION “REASONABLE SUSPICION” REQUIRED

Barrett v. State, 837 N.E.2d 1022 (Ind. Ct. App. 11/22/05), *trans. denied*

Fourth Amendment

- In determining whether an investigatory stop complies with the Fourth Amendment, a reviewing court must determine whether the stopping officers had “reasonable suspicion” of criminal activity when the stop was made.
- In making this determination, the court must look at the totality of the circumstances in each case to see whether the detaining officer had a particularized and objective basis for suspecting legal wrongdoing.
- The stopping officer in this case had a tip from a security officer that two individuals, later identified as the defendant and his companion, had purchased methamphetamine precursors. The officer saw two individuals matching the security guard’s description.
- The officer followed the defendant’s vehicle and observed it being driven in a manner that indicated objective signs of driver impairment.
- The Court of Appeals held that the officer in this case had a particularized and objective basis for making a traffic stop and did not violate the Fourth Amendment in so doing.

Indiana Constitution

- In an investigatory stop, to prove that the stopping officer did not violate the detainee’s constitutional rights under Article 1, Section 11 of the Indiana Constitution, the State must prove that, given the totality of the circumstances, the intrusion was “reasonable.”

- In this case, in addition to the information that the defendant had purchased cold medicine, the officer observed indicia of impaired driving. As a result of his training and experience, the observing officer believed that the vehicle he had observed was possibly driven by an intoxicated driver.
- In fact, the stopping officer testified that he observed three clues identified by the National Highway Traffic Safety Administration as initial indicators of impaired driving.
- The Court of Appeals concluded that, given the totality of the circumstances, the intrusion of the traffic stop in this case was reasonable under Article 1, Section 11 of the Indiana Constitution.

Cannon v. State, 839 N.E.2d 185 (Ind. Ct. App. 12/1/05)

Fourth Amendment

- Police may briefly detain a person for investigatory purposes without a warrant or probable cause if the detention is based upon specific and articulable facts, which in conjunction with rational inferences drawn from those facts support a conclusion that the officer had a reasonable suspicion that criminal activity was afoot.
- In determining whether the detaining officer had the requisite reasonable suspicion, the Court will examine the totality of the circumstances to conclude whether the officer had a particularized and objective basis for suspecting legal wrongdoing.
- The reasonable suspicion requirement is met where the facts known to the officer at the moment of the stop, together with the reasonable inferences arising from those facts would cause an ordinarily prudent person to believe criminal activity has or is about to occur.
- In this case, Cannon was initially stopped for the purpose of directing traffic. The officer then observed the defendant driving erratically in a school zone and in an area under construction.
- The Court of Appeals concluded that under these circumstances, the officer had reasonable suspicion to investigate the possibility of reckless driving by approaching the defendant's stopped vehicle.
- The officer's further observation of the defendant attempting to place a bottle of gin between the seats of his car, coupled with the odor associated with an alcoholic beverage on the breath and person of the defendant, created reasonable suspicion to believe Cannon was driving while intoxicated.
- This reasonable suspicion justified the officer's order that Cannon pull his vehicle into the school parking lot.
- Neither the police stop nor the evidence gathered as a result thereof violated the Fourth Amendment.

Indiana Constitution

- The defendant contended that it was the actions of the officer in forcing him to come to a complete stop within a short distance that caused the

defendant's driving to be erratic. Therefore, the defendant argued, the stop of his vehicle was not reasonable.

- The Court of Appeals held that the actions of the officer in this case were reasonable and did not violate the rights of the defendant under Article I Section 11 of the Indiana Constitution.

Johnson v. State, 856 N.E.2d 706 (Ind. Ct. App. 12/30/05), *Ordered published* 2/15/06
Fourth Amendment

- Police questioning by itself is unlikely to result in a Fourth Amendment violation. Unless circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say the questioning resulted in a detention under the Fourth Amendment.
- A consensual encounter may become a seizure, however, when an officer orders a suspect to freeze or get out of a vehicle.
- When an individual no longer remains free to leave the officer's presence, an investigatory stop has begun and the officer must have a reasonable articulable suspicion of criminal activity.
- Reasonable suspicion does not require proof of wrongdoing by a preponderance of the evidence, but does require more than an inchoate and unparticularized suspicion or hunch.
- In determining the existence of reasonable suspicion, the court will look at the totality of the circumstances.
- When Defendant Johnson was ordered out of his car, an investigatory stop had clearly begun.
- At the time of the stop in this case, the stopping officer knew only that Johnson and others had left an apartment and gotten into a car without a visible license plate. The officer did not wait until the car was driven to effectuate a stop. The officer became "suspicious" of Johnson only after he would not provide his social security number. Failure to provide one's social security number is not a crime. In fact, the officer in this case observed no infraction or ordinance violation.
- The Court of Appeals concluded that the officer who stopped Johnson did not have reasonable suspicion sufficient to justify an investigatory stop.
- The mere fact that the defendant got into a parked car that did not have a visible license plate did not support the officer's investigatory stop. Nor did the defendant's inability or unwillingness to provide his social security number upon request provide reasonable suspicion that criminal activity might be afoot.
- The unlawful investigative stop in this case was the precursor to the events that followed – the belief Johnson was attempting to flee, followed by a struggle, arrest and a search that revealed contraband.
- But for the unlawful investigatory stop in this case, the defendant would not have been searched and the contraband in his possession would not have been found.

Indiana Constitution

- Neither could the search of the defendant under the facts of this case withstand scrutiny under Article 1, Section 11 of the Indiana Constitution.

Campbell v. State 841 N.E.2d 624 (Ind. Ct. App. 2/1/06)

- The Defendant argued that the trial court erred in admitting his gun into evidence in that the police initiated an investigatory stop without reasonable suspicion, thus violating his Fourth Amendment and Article 11 Section 11 rights.
- At issue was whether the defendant was seized when the police illuminated him. (This was an issue of first impression.)
- To determine whether this circumstance, constituted a seizure, the Court of Appeals considered all of the circumstances surrounding the defendant's encounter with law enforcement to assess whether a reasonable person would have believed, under the circumstances, that he was not free to leave.
- As the investigating officer in this case approached the residence at 2714 Eleventh Avenue, he saw the defendant and an unidentified individual standing behind a vehicle. When Campbell moved, the officer shined his spotlight on him. While illuminated Campbell crouched down, pulled a shiny object from his waistband and tossed the object under the car. The object was a handgun.
- No sirens or flashers were in use at the time. The officers at the scene had not ordered Campbell to stop, physically touched him nor displayed their weapons. Further, there was no threatening presence of several officers when the defendant got rid of the gun.
- Based upon all the circumstances surrounding the above-described encounter, the Court of Appeals concluded that it could not be said that shining a spotlight, alone, amounted to such a show of authority that a reasonable person would have believed he was not free to leave.
- Campbell was not seized under the Fourth Amendment of the Federal Constitution or under Article 1, Section 11 of the Indiana Constitution when he tossed his gun underneath the car.
- Abandoned property is not subject to Fourth Amendment protection. Only if property is abandoned after a citizen is improperly detained, is the evidence not admissible.
- The defendant's handgun was abandoned property and was, therefore, properly admitted into evidence by the trial court.

Powell v. State, 841 N.E.2d 1165 (Ind. Ct. App. 2/6/06)

- As a general rule, an anonymous tip is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop unless "significant aspects" of the tip are corroborated by the police.

- An anonymous telephone tip, absent any independent indicia of reliability or officer-observed confirmation of the caller's prediction of the defendant's future behavior, is not enough to permit police to detain a citizen and subject him or her to a *Terry* stop.
- The call from CVS received by dispatch was an anonymous call.
- No information was given regarding the caller's basis of knowledge. One could not know at the time of the call whether the caller was a concerned citizen, a prankster, or an imposter.
- As for corroboration of the caller's tip, the officer confirmed only the description of the vehicle and the license number. This was information easily obtained and readily available to anyone in the general public.
- No corroboration, prior to the stop of the defendant, established that the caller's tip was reliable in its implication of illegality.
- The State, therefore, failed to establish that the officer who stopped the defendant had an objective and articulable suspicion that Powell had committed, was committing or was about to commit legal wrongdoing. The tip received did not contain the requisite indicia of reliability to provide reasonable suspicion to stop Powell's truck.
- The Court of Appeals concluded that the trial court should have granted Powell's motion to suppress evidence obtained after the stop, including evidence of Powell's intoxication and his status as an habitual traffic offender.
- The Court noted that this opinion was not intended to discourage citizens from reporting suspected intoxicated drivers. In such situation, however, the State's response to such reports must comply with the dictates of the Fourth Amendment, the Court said.

Kellems v. State, 842 N.E.2d 352 (Ind. Sup. Ct. 2/16/06)

- At issue in this case was whether the anonymous tip received by law enforcement provided sufficient reasonable suspicion to validate the traffic stop of the defendant.
- Tips from identified informants are sufficient to constitute reasonable suspicion to support an investigatory stop because a known or identified informant's reputation can be assessed, and he may be held responsible if his allegation turns out to be fabricated.
- The prospect of prosecution for making a false report, standing alone, does not, however, in all cases constitute reasonable suspicion. False reporting requires that the person giving the false report "know" that the report is false.
- The report of a concerned citizen, as distinguished from a professional informant, may be considered more reliable. Again, however, the totality of the circumstances controls.
- Particularly relevant in making such a determination of reliability is the circumstance of immediacy of a threat to public safety.

- In this case, the tip by Dodie McDonald was sufficient to provide the Tell City police with the reasonable suspicion required to support an investigatory stop of Kellem's car. McDonald gave the police her name and her date of birth. The police knew where McDonald lived and with whom. Under the circumstances, had McDonald given a knowing false report, she was sufficiently identified so as to be held criminally responsible for false reporting.
- Under the totality of the circumstances, sufficient information was known to the police to establish reasonable suspicion. Further, the Court stated that police officers need to respond immediately to criminal reports of this nature in the interest of public safety.

Ross v. State, 844 N.E.2d 537 (Ind. Ct. App. 3/28/06)

- Reasonable suspicion is determined on a case-by-case basis by looking at the totality of the circumstances, but is generally satisfied when facts known to the officer at the moment of the stop, along with the reasonable inferences arising from such facts, would cause an ordinarily prudent person to believe criminal activity has occurred or is about to occur.
- In the instant case, the officer saw the defendant conduct a "transaction" in a high crime area. The defendant then took off on his bicycle cupping something in his hand. The other male engaged in the transaction took off running in the opposite direction.
- Presence in a high crime area may be considered a factor in assessing the totality of the circumstances confronting the officer at the time of a stop, but is not enough, alone, to constitute reasonable suspicion.
- Multiple other factors in this case, however, supported the officer's stop of the defendant, including:
 - Ross was in a high crime area;
 - Ross was seen making a "transaction";
 - Ross was seen speeding off from the scene of the transaction; and
 - Ross was carrying something unusual in his hand.
- The aforementioned factors would have been enough to support even the arrest of the defendant.
- Abandoned property is not subject to Fourth Amendment protection only when that property is abandoned after a citizen has been improperly detained is it not subsequently admissible in evidence.
- In this case, the defendant was properly stopped. Ross dropped the cocaine he had in his hand before he was actually detained.
- Consequently, the Court of Appeals found that the defendant had abandoned the cocaine and it was appropriately seized by the police.
- The trial court did not err in denying the defendant's motion to suppress.

Coleman v. State, 847 N.E.2d 259 (Ind. Ct. App. 5/18/06), *reh'g denied*, *trans. denied*.

- A confidential informant's information can be the basis of an investigatory stop if the informant is known to the officer personally and has provided him with information in the past and the informant came forward personally to give information that is immediately verifiable at the scene. *Adams v. Williams*, 407 U.S.143 (1972).
- In stopping Coleman, the police relied upon a confidential informant's initial tip, his subsequent telephone conversation with "J.C.", setting up a meeting with J.C., and finally, the confidential informant identifying Coleman as J.C. at the predetermined meeting place.
- The informant in this case was not a well-known informant. The record did not disclose that the confidential informant had given any specific description of J.C. prior to identifying him. The police were able to hear only the confidential informant's side of his telephone conversation with J.C.
- Although acknowledging that this was a "close case," the Court of Appeals concluded that, under the totality of the circumstances, the officer lacked the requisite reasonable suspicion to stop Coleman.
- The officer did not independently investigate the tip, nor confirm that the man in the mall was J.C. until after he had been detained.
- The officers did not observe Coleman committing a crime, or even acting suspiciously before he was stopped.
- Further, Coleman was detained during the search and was not advised of his right to consult with counsel before giving consent to search.
- Based, on the foregoing, the Court of Appeals concluded that the trial court erred in not granting Coleman's motion to suppress.

Payne v. State, 854 N.E.2d 1199 (Ind. Ct. App. 10/11/06), *trans. denied*

- This case looked again at the three-levels of police-citizen interaction.
- The Fourth Amendment requires that an arrest or detention that lasts for more than a short period of time must be justified by probable cause.
- The Fourth Amendment does, however, allow police, without a warrant or probable cause to briefly detain an individual for investigatory purposes if, based upon specific and articulable facts, the officer has reasonable suspicion that criminal activity has or is about to occur.
- When a police officer makes a casual and brief inquiry of a citizen, which involves neither arrest nor stop, it is deemed a consensual encounter, and the Fourth Amendment is not implicated.
- An interaction is consensual and no violation of the Constitution occurs so long as an individual remains free to leave.
- Factors to be considered in determining whether a reasonable person would believe he is free to leave include:
 - The threatening presence of several officers;
 - The display of a weapon by an officer;
 - The physical touching of the person; or

- The use of language or tone of voice indicating that compliance with the officer's request might be compelled.
- The deputy's contact with the defendant in this case was initially a consensual encounter.
- Seizures do not occur simply because police officers approach an individual and ask a few questions.
- The Supreme Court has previously held that "in the ordinary course, a police officer is free to ask a person for identification without implicating the Fourth Amendment.
- An investigatory detention requires reasonable suspicion, based upon specific and articulable suspicion that criminal activity has or is about to occur.
- Reasonable suspicion determinations are made by looking at the totality of the circumstances in each individual case to see whether the officer has particularized an objective basis for suspecting legal wrongdoing.
- Further, an officer's unarticulated plan has no bearing on the question of custody. The test is how a reasonable person in the suspect's shoes would understand the situation.
- Our Supreme Court has held that "in assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly."
- In this case, the Court determined that the police had obtained the defendant's permission to handcuff him and that the brevity of the detention did not elevate the detention to an arrest. The detention was an investigatory detention and the police had reasonable suspicion to support that detention.

Davis v. State, 858 N.E.2d 168 (Ind. Ct. App. 12/11/06)

- The police may stop an individual for investigatory purposes based on specific articulable facts supporting a determination that reasonable suspicion exists that criminal activity is afoot.
- Reasonable suspicion must be based upon more than hunches or unparticularized suspicions.
- Reasonable suspicion entails some minimum level of objective evidentiary justification.
- In this case, an officer saw a vehicle pull into a gas station and park. Minutes later a second vehicle pulled in and parked next to the first vehicle. A passenger from the first vehicle got into the second vehicle which vehicle then left the parking lot. The officer then stopped the first vehicle, still on the station lot, on suspicion of narcotics activity.
- The Court of Appeals concluded that the behavior displayed by the vehicles in this case could not be labeled as suspicious.
- Presence in a high crime area is not, alone, sufficient to create reasonable suspicion to justify an investigatory stop.

- The officer in this case did not have reasonable suspicion based on the totality of the circumstances to stop the vehicle observed for a suspected narcotics violation.
- The trial court erred in denying the defendant's motion to dismiss.

Greeno v. State, 861 N.E. 1232 (Ind. Ct. App. 2/27/07)

- Had the defendant remained seated on the roll of carpet on which he was sitting when the police officer arrived, and then announced that he had methamphetamine in his pocket, this case might have been analogous to *Overstreet*.
- In this case, however, after the defendant ran when the officer yelled for him to stop, the defendant was obviously no longer free to walk away and the Fourth Amendment was implicated.
- When the officer arrived he obviously did not have reasonable suspicion to detain anyone.
- The call to law enforcement was from an anonymous caller. For an anonymous tip to give rise to reasonable suspicion, the tip must contain facts not easily obtainable by the general public and must demonstrate an intimate familiarity with the suspect's affairs and be able to predict future behavior.
- The tip that a man named John Gregory would be at Contractors Plus and that he possessed Oxycontin contained no indicia of reliability or credibility.
- The report that Gregory possessed and used Oxycontin did not necessarily reflect illegal activity.
- The tip did not, therefore, provide reason to believe illegal activity was afoot.
- Further, the fact that the defendant walked away did not give rise to reasonable suspicion either.
- The police officer tried to justify his search of the defendant on grounds of officer safety. Officer safety is always a legitimate concern, but alone, cannot form the basis for a valid investigatory stop.
- The officer in this case might have been justified in searching Greeno had he been legally stopped. He was not legally stopped, however.
- The Fourth Amendment prohibited the police officer in this case, without reasonable suspicion, from requesting that Greeno stop and then chasing him.
- Because the stop was improper in this case, the evidence collected should have been suppressed.

Turner v. State, 862 N.E.2d 695 (Ind. Ct. App. 3/16/07)

Indiana Constitution

- When a search and/or seizure is challenged under the Indiana Constitution, the State has the burden of showing law enforcement's intrusion was reasonable in light of the totality of the circumstances.
- A police officer's stop and brief detention of a motorist is reasonable and permitted under Article 1, Section 11 if the officer reasonably suspects that the motorist stopped is engaged in, or about to engage in illegal activity.
- Pre-text stops are not *per se* unreasonable under the Indiana Constitution.
- If there is an objectively justifiable reason for a stop, the stop will be deemed valid, whether or not the officer would have otherwise made the stop but for ulterior suspicions or motives.
- The stopping officer in this case was trained to estimate vehicle speeds within five miles-per-hour. The problem was that he could not say with certainty what the posted speed limit was on the street where the defendant was stopped.
- In this case, the admittedly pre-textual stop facilitated by a traffic violation of questionable validity was not reasonable in light of the circumstances and thus violated Turner's rights under Article 1, Section 11.
- The Court of Appeals could not say that the connection between the illegal stop and Turner's confession was attenuated sufficiently to save the defendant's confession.
- The defendant's confession was, therefore, suppressed.

CONSENSUAL ENCOUNTER TO INVESTIGATIVE DETENTION

Bentley v. State, 846 N.E.2d 300 (Ind. Ct. App. 4/27/06), *trans. denied*

- The police-citizen interaction in this case began as a consensual encounter when an officer approached a parked car and asked the defendant and the other occupants of the vehicle about their presence in a parking lot.
- A request by the officer for identification from one of the passengers did not convert the encounter into an investigatory stop.
- Further, the officer's request when he first approached the vehicle and asked the occupants to "keep their hands where he could see them," was also insufficient to convert the encounter into an investigatory stop.
- The report received by the police merely prompted officers to investigate further the suspicious activity reported.
- The actions of the passenger in this case, coupled with the officer's knowledge that there had been recent robberies and thefts in the area, led the police to suspect criminal activity was afoot and supported an investigatory detention.
- The Court determined that the detention was proper.

State v. Augustine, 851 N.E.2d 1022 (Ind. Ct. App. 8/1/06)

- As long as an individual remains free to leave his encounter with a law enforcement officer, the encounter is consensual and no violation of the defendant's constitutional rights has occurred.
- In this case, the officer's initial contact with the defendant was determined to be a consensual encounter.
- The consensual encounter evolved into an investigatory stop, however, when the officer asked the defendant to exit the vehicle to submit to field sobriety tests.
- Cooperative citizen informants include victims of crimes and persons who personally witness a crime who come forward out of a spirit of good citizenship and desire to assist law enforcement.
- A court must look at the totality of the circumstances to determine whether reasonable suspicion exists to effect an investigatory stop.
- A circumstance of particular relevance in this "reasonableness" determination is the immediacy of a threat to public safety by the action reported.
- In this case, a concerned citizen informant called police dispatch from a cell phone to report erratic driving. The caller also gave the police specific information including the location and the license plate number of the defendant's vehicle.
- There was no evidence to suggest that the citizen informant concocted a false report or acted in a manner that might have placed the caller's motive or credibility at issue.
- Under the totality of the circumstances, the Court of Appeals concluded that reasonable suspicion supported the officer's investigatory stop in this case.
- The officer obtained corroborative evidence of the defendant's physical condition during his encounter with the defendant before initiating the investigatory detention.
- The Court of Appeals reversed the trial court's order granting defendant's motion to suppress.

Clarke v. State, 854 N.E.2d 423 (Ind. Ct. App. 9/29/06), *trans. granted* (12/7/06)

- No seizure occurs from the simple act of an officer approaching the occupant of a parked car to ask a question. This is precisely what the Court of Appeals concluded happened in this case.
- The conduct of the officer which included telling Clarke that the officer was there to investigate a drug complaint, asking if Clarke had anything illegal in his car, and twice asking if she could search, would have communicated to a reasonable person that the defendant was not free to go. What had begun as a consensual encounter had turned into a brief detention for investigatory purposes.
- Reasonable suspicion was, therefore, necessary to support that detention.

- The reasonable suspicion needed to support an investigatory detention is based upon articulable facts which, together with the reasonable inferences to be drawn therefrom, would permit an ordinary prudent person to believe that criminal activity has been or was about to occur. More is required than an officer's general or unparticularized hunch.
- Whether an officer has reasonable suspicion in a particular case is determined by considering the totality of the circumstances.
- As a general rule, an anonymous tip is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop, unless two conditions are met:
 - Significant aspects of the tip are corroborated by the police. Corroboration requires an anonymous tip give the police something more than details regarding facts easily obtainable by the general public to verify its reliability.
 - The tip must demonstrate an intimate familiarity with the suspect's affairs and be able to predict future behavior.
- The tip in this case lacked information which would have permitted the police to corroborate the caller's claim of criminal activity. Further, the police officer did not observe any conduct by the defendant or his passenger suggestive of criminal activity.
- The officer in this case lacked reasonable suspicion to detain Clarke for investigative purposes, the Court of Appeals concluded.
- The Doctrine of the "Fruit of the Poisonous Tree" bars admissibility in criminal proceedings of evidence obtained in the course of unlawful searches and seizures. When a defendant can show that evidence was obtained in violation of the Fourth Amendment, the Doctrine may be invoked. The Doctrine does not apply when the derivative evidence has an independent source; when the discovery of the challenged evidence is so attenuated as to dissipate the taint; or when the challenged evidence would inevitably have been properly obtained.
- The defendant's consent in this case, even if voluntary, was tainted by his illegal detention.
- The Court of Appeals concluded that the evidence seized had to be suppressed as fruit of the poisonous tree.

ANONYMOUS TIPS

Castner v. State, 840 N.E.2d 362 (Ind. Ct. App. 1/12/06)

- As a general rule, an anonymous tip, alone, is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop.
- If an anonymous tip is "suitably corroborated," however, it may bear sufficient indicia of reliability to provide the reasonable suspicion necessary to justify a *Terry* stop.
- Reasonable suspicion requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

- The report from dispatch, in the case at bar, was an anonymous tip.
- The assertion of illegality in the tip was not independently corroborated.
- The defendant was not selling drugs to children. In fact, no children were observed in the immediate vicinity.
- The only other facts cited by the officer to justify his detention of Castner was the defendant's presence in a high crime area and that he had his hands in his pockets.
- Under the totality of the circumstances, the fact Castner was in a reputed high crime area with his hands in his pockets could not have given the officers more than an unparticularized hunch that criminal activity might be afoot.
- The Court of Appeals concluded that the officer in this case did not have reasonable suspicion to justify his detention of Castner, and the pipe found during that detention was, therefore, inadmissible.
- In Castner's consolidated case, the officer observed the defendant with one hand inside his coat, and saw him turn and walk in the opposite direction upon making eye contact with the officer.
- The act of turning away from a police officer does not rise to the level of reasonable suspicion necessary to justify an investigatory stop.
- A short time after turning away, Defendant Castner was observed in a fenced-in dumpster area outside a Village Pantry. The defendant's jacket was on the ground next to a screwdriver. A CD player, CD's and a remote control were stuffed into the C-bracket of the dumpster.
- The officer in this case did not detain the defendant until he found him in the dumpster area with the CD's and the CD player. The officer did not err in detaining the defendant at that point. The evidence seized was properly admitted into evidence.

Burkes v. State, 842 N.E.2d 426 (Ind. Ct. App. 2/15/06), *trans. denied*

- When determining whether reasonable suspicion for a stop exists, a reviewing court will look at the totality of the circumstances of the given case.
- The reasonable suspicion inquiry is fact sensitive and is thus determined on a case-by-case basis.
- The defendant in this case claimed that the anonymous tip received by law enforcement was insufficient to establish reasonable suspicion justifying the investigatory stop made.
- An anonymous tip, alone, is not enough to support the reasonable suspicion necessary for a *Terry* stop.
- An anonymous tip must be accompanied by specific indicia of reliability or must be corroborated by a police officer's own observation in order to pass constitutional muster.
- Reasonable suspicion may be established by the totality of the circumstances.

- Although the anonymous tip alone will be insufficient to establish reasonable suspicion, where significant aspects of the tip are corroborated by the observations of the police, a subsequent investigatory stop is likely valid.
- In this case, the officer corroborated only innocent portions of the tip. The corroborated information did not show that criminal activity had or was about to occur.
- The Court of Appeals noted that the information from the anonymous tip in this case was not enough to support a reasonable suspicion determination justifying an investigatory stop of Burkes. The story did not end there, however.
- The police had every right to stop and arrest the defendant's companion on an outstanding warrant. The question presented was whether the police had reasonable suspicion to perform an investigatory stop on the defendant.
- The detective was inside the house of a known drug user and addict when the user who had an outstanding warrant for her arrest appeared at the front door with two men. One of those men matched the description of an alleged drug dealer.
- Ordering the three to freeze was reasonable in that the officer had a right to temporarily preserve the status quo.
- When the detective gave the order to freeze, Burkes ran.
- These facts supported reasonable suspicion which in turn supported an investigatory stop.
- After he was detained, Burkes admitted possessing marijuana and a handgun. Further, search of Burkes' person was then justified as a search incident to arrest.

Sellmer v. State, 842 N.E.2d 358 (Ind. Sup. Ct. 2/16/06)

- No bright-line rule exists with respect to reasonable suspicion, but the Indiana Supreme Court has held, as a general rule, that an anonymous tip alone, is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop.
- For an anonymous tip to constitute the reasonable suspicion necessary for a valid investigatory stop, at least two conditions must be met:
 - Significant aspects of the tip must be corroborated by the police. Such corroboration requires that an anonymous tip give the police something more than details regarding facts easily obtainable by the general public to verify its credibility.
 - An anonymous tip, if it is to be considered reliable enough to constitute reasonable suspicion to conduct an investigatory stop, must also demonstrate an intimate familiarity with the suspect's affairs and be able to predict future behavior.
- Police were entitled to approach Sellmer and ask if she was willing to answer questions.

- The procedure utilized by the police in this case, however, was such that Sellmer's consent to search her car was not valid.
- Sellmer was asked repeatedly if she knew why the police would have received a report of a large quantity of contraband in her car. She was told it was in her best interest to cooperate and not make the police "jump through a bunch of hoops." Comments by the officer would have led a reasonable person to conclude that she was not free to leave.
- Although none of the enumerated factors taken alone was sufficient to lead a reasonable person to believe she was not free to leave, applying the totality of the circumstances test, given the extensive efforts to which the officer went in this case, the Indiana Supreme Court concluded that a reasonable person in Sellmer's position would have reasonably believed she was either under arrest or at least not free to resist the entreaties of the police.
- Sellmer was entitled to an advisement of her *Pirtle* rights. In that the police did not give such an advisement, in this case, Sellmer's motion to suppress should have been granted.

Hardister v. State, 849 N.E.2d 563 (Ind. Sup Ct. 6/28/06), *reh'g denied*

Fourth Amendment

- Although, as a general rule, an anonymous tip is not a basis for either reasonable suspicion nor probable cause, it is sufficient to allow law enforcement to knock and announce and make inquiries which the occupants of a residence are free to decline to answer if they so choose.
- In this case, the officers' knock at the front door and observation of flight from a vantage point in front of the door knocked upon, did not implicate the Fourth Amendment.
- The defendant argued that the residents' flight amounted to a refusal to admit the officers and, therefore, the officers' legitimate business was at an end and the officers were required at that point to leave the premises.
- The State contended that the residents' flight created an exigent circumstance justifying warrantless entry and pursuit of the residents of the house.
- The Indiana Supreme Court did not accept either of these arguments.
- Unprovoked flight is not a mere refusal to cooperate. It is the consummate act of evasion and warrants further investigation by the police.
- Further, there is no general emergency exception to the search warrant requirement guaranteed by the Fourth Amendment.
- In this case, the anonymous tip plus the corroborating circumstance of flight in an area known for narcotics traffic provided reasonable suspicion to believe some kind of criminal activity was afoot, but did not furnish probable cause to believe the residents of the house had just committed a crime or probable cause to believe that drugs were about to be destroyed.

- The mere fact that officers enter the curtilage of a residence to conduct an otherwise lawful *Terry* stop does not ipso *facto* render the physical invasion of the curtilage an unlawful search.
- In this case, the law enforcement invasion of the area surrounding the house was nothing more than pursuit of fleeing suspects along a sidewalk leading to the back door.
- Once lawfully in the back yard, looking into the kitchen through the side and rear windows of the house was also reasonable as an effort to locate the fleeing suspects.
- One the officers observed suspected cocaine going down the drain, exigent circumstances existed to allow the police to enter the residence.
- Warrantless entry of the residence was justified.

Indiana Constitution

- The focus of the exclusionary rule under the Indiana Constitution is the “reasonableness” of the police conduct.
- Pursuit of fleeing residents into the backyard in this case, was reasonable and involved no separate violation of protections afforded under the Indiana Constitution.
- The trial court appropriately admitted the officers’ testimony regarding what they observed through the windows of the residence as well as the weapons, drugs and other items seized pursuant to a warrant.

PAT-DOWN FOR WEAPONS

N.W. v. State, 834 N.E.2d 159 (Ind. Ct. App. 9/14/05), *trans. denied*

- When a police officer makes a *Terry* stop, if he has reasonable fear of danger, he may conduct a carefully limited search of the outer clothing of the suspect in an attempt to discover weapons that might be used to harm him.
- The officer need not be absolutely certain the person is armed. The issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others is in danger.
- An officer’s authority to conduct a pat-down search is dependent upon the nature and extent of his particularized concern for his safety.
- An officer may not frisk or pat-down for weapons, unless the officer holds a reasonable belief that the particular individual is armed and dangerous.
- The officer in this case could not point to a particularized suspicion to support his belief that N.W. might be armed and dangerous.
- It was the State’s contention that the mere fact that N.W. was suspected of having committed a burglary was an independent basis upon which to sustain a weapons frisk.
- The Court of Appeals agreed with the State. Given the inherent danger associated with burglary, the Court concluded that it was reasonable that the deputy might have feared that the burglary suspects might pose a danger to him or others.

- It was early morning, the deputy sheriff was alone, the two individuals stopped matched the description of the suspects who had recently fled the scene of a crime, and N.W. was suspected of burglary – an inherently dangerous crime.
- These facts supported a reasonable belief that N.W. was armed and dangerous and the pat-down of N.W. was justified.

Howard v. State, ____ N.E.2d ____ (No. 82A01-0605-CR-219) (Ind. Ct. App. 3/19/07)

- In addition to detainment, *Terry v. Ohio*, permits a police officer to conduct a limited search of an individual's outer clothing for weapons if the officer reasonably believes the individual is armed and dangerous.
- The Indiana Supreme Court has previously held that neither a traffic stop nor a defendant's apparent nervousness provide sufficient basis for a pat-down search.
- Assuming, without deciding, that the initial stop in this case was valid, the Court addressed the legality of the pat-down conducted.
- Neither officer testified that he was concerned for his safety when he ordered the defendant out of his vehicle.
- Testimony from one of the officers confirmed that during prior dealings with Howard the officer had told the defendant he would search him every time he saw him.
- The circumstances did not warrant a pat-down search incident to a Terry stop in this case.
- Seizure of the defendant's person and thereby his possession was illegal, the Court of Appeals concluded.

PERIOD OF DETENTION

State v. Quirk, 842 N.E.2d 334 (Ind. Sup Ct. 2/14/06)

- After the defendant's vehicle had been stopped, neither the request for a driver's license and registration, a license plate check, a request to search the vehicle, nor an inquiry regarding whether the defendant had a weapon in his vehicle, were within the scope of reasonable detention.
- The Court examined a number of things the trooper in this case considered in determining that he had reasonable suspicion to detain Quirk. The Supreme Court concluded that "a combination of irrelevant conduct and innocent conduct, without more, cannot be transformed into a suspicious conglomeration."
- Under the totality of the circumstances in this case, detention beyond the period necessary to issue a warning was unreasonable and a violation of the defendant's constitutional rights under the Indiana Constitution.
- The evidence seized was, therefore, tainted and the suppression order of the trial court was affirmed.

Wilson v. State, 847 N.E.2d 1064 (Ind. Ct. App. 5/26/06)

- At issue was whether the defendant's detention during a lawful traffic stop was longer than necessary to effectuate the purpose of the stop and designed to stall until a drug dog could get to the scene of the stop.
- A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment, *Illinois v. Caballes*, 543 U.S. 405, 410 (2005).
- A seizure that is justified solely by the interest in issuing a warning ticket to the driver of a vehicle can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.
- While a dog sniff is not a search, upon the completion of a traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention.
- The critical facts in determining whether a vehicle was legally detained at the time of the canine sweep are whether the traffic stop was concluded and if so, whether there was reasonable suspicion at that point to continue to detain the vehicle for investigatory purposes.
- In assessing whether a detention is too long in duration, the Court will examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.
- In this case, in that the warning tickets were written some time before the drug dog arrived, it was apparent that the officer could have completed the traffic stop sooner than he did, the Court of Appeals concluded.
- The officer did not have reasonable suspicion to detain the defendant after the traffic stop was completed and until the arrival of the drug dog that was summoned only after Wilson declined to consent to a search.
- The Court of Appeals held that the trial court had erred in denying the defendant's motion to suppress.

SEARCH WARRANT EXCEPTIONS FOURTH AMENDMENT

CONSENT

Actual or Apparent Authority

State v. Keller, 845 N.E.2d 154 (Ind. Ct. App. 4/10/06)

- Police utilized a traditional knock-and-talk when they went to a hotel room looking for the person they believed to be staying there.
- Officer approaching the door of a residence, knocking and identifying themselves as police officers, asking to talk to an occupant about a criminal complaint and eventually requesting permission to search does not violate the rights of the residents of a home.
- Absent a clear expression by the owner to the contrary, officers in the course of their official business, may approach a dwelling and seek permission to question an occupant without probable cause.
- The police gained entry through false pretenses.
- Without having properly identified themselves before obtaining permission to enter, the officer safety search that followed was in violation of the Fourth Amendment and any evidence seized was the fruit of the poisonous tree.
- The person who paid for the room in this case was subsequently brought to the hotel and signed a consent to search form.
- Valid consent is a well-recognized exception to the warrant requirement.
- The room renter's consent was adequate to permit a search of the hotel room and evidence improperly seized by the officers during the previous safety search would have been encountered by different and legitimate means.
- Although the Court of Appeals disapproved of the method of gaining initial entry, which resulted in an improper search and seizure, the Court held valid the consent given shortly thereafter.
- The evidence discovered was admissible and the trial court's denial of the defendant's motion to suppress was upheld.

Miller v. State, 846 N.E.2d 1077 (Ind. Ct. App. 5/10/06), *trans denied*

- Defendant Miller was in custody when he was asked to consent to the search of his vehicle. In that Miller was not given *Pirtle* Warnings his consent was not valid.
- An invalid consent did not give rise to a reversal in this case, however, due to the existence of probable cause for the police to search the defendant's vehicle.
- The Indiana Court of Appeals held in 2002, that a trained and experienced officer's detection of a strong and distinct odor of burnt marijuana coming from a vehicle gave the officer probable cause to search a vehicle.

- In the case at bar, the officer noticed the strong odor of what he believed to be marijuana coming from the defendant's vehicle. Probable cause existed justifying the warrantless search of the car.
- In that the warrantless search of the defendant's vehicle was supported by probable cause, the search did not violate the Fourth Amendment.

Hirshey v. State, 852 N.E.2d 1008 (Ind. Ct. App. 8/23/06), *trans. denied*

- At issue was whether the defendant's consent to search the garage was voluntarily given. When the State relies upon consent to justify the lawfulness of a search, the State has the burden of proving that the consent was voluntarily given.
- Voluntariness of consent is a question of fact determined from the totality of the circumstances.
- It is not improper for an officer to inform a defendant that a warrant will be sought if consent is not given. An officer may not tell the defendant that he will get a warrant if consent is not given.
- It was within the trial court's discretion to credit the officer's testimony that Hirshey was only told that a warrant would be sought as more credible than the defendant's testimony. Hirshey's consent to search the garage was determined to have been voluntarily given.
- Hirshey argued that even if the search of the garage was consensual, it exceeded the scope of his consent. He argued that the fact that he was kept outside during the search prevented him from placing any limitations on the search.
- The scope of a consent search is determined by what a reasonable person would have understood by the exchange between the officer and the suspect.
- In this case, Hirshey had already been arrested based on the marijuana, paraphernalia, and knives found in his trailer at the time consent was given. Hirshey expressed no desire to limit the search of the garage in any way.
- Under the circumstances of this case, a reasonable person would not conclude that searching the cabinets and stove was beyond the scope of the defendant's consent.

Navarro v. State, 855 N.E.2d 671 (Ind. Ct. App. 10/23/06)

- When the State relies on consent to justify a warrantless search, the burden on the State is to prove that the consent was, in fact, freely and voluntarily given.
- Voluntariness of consent is a question of fact to be determined from the totality of the circumstances.
- Consent is valid except where procured by fraud, duress, fear, intimidation or where merely a submission to the supremacy of the law.

- To constitute a valid waiver of Fourth Amendment rights, the consent given must be an intelligent relinquishment of a known right or privilege.
- Consent may not be conclusively presumed from a verbal expression of assent unless the court determines, from the totality of the circumstances, that the verbal assent reflected an understanding, un-coerced and unequivocal election to grant the police a license which the person knows may be freely withheld.
- The totality of the circumstances from which voluntariness is to be determined includes, but is not limited to:
 - Whether the defendant was advised of his *Miranda* rights prior to the request to search;
 - The defendant's degree of education and intelligence;
 - Whether the defendant was advised of his right not to consent;
 - Whether the detainee has had previous encounters with law enforcement;
 - Whether the officer made any express or implied claims of authority to search without consent;
 - Whether the officer was engaged in any illegal action prior to the request;
 - Whether the defendant was cooperative previously; and
 - Whether the officer was deceptive as to his true identity or the purpose of the search.
- The standard utilized in assessing a defendant's consent under the Fourth Amendment calls for an objective analysis.
- Reviewing these factors, the Court of Appeals concluded that the defendant's consent was freely and voluntarily given in this case.

Friend v. State, 858 N.E.2d 646 (Ind. Ct. App. 12/18/06)

- When seeking to rely upon consent to justify a warrantless search, the State has the burden of proving that the consent was freely and voluntarily given. The voluntariness of the consent to search is to be determined by a consideration of the totality of the circumstances.
- In *Pirtle v. State*, (Ind. 1975), the Indiana Supreme Court held that a person who is asked to give consent to search while in police custody is entitled to the presence and advise of counsel prior to making the decision whether to give such consent. This right may be waived, but the State has the burden of showing that such a waiver was explicit.
- A person in custody must be informed of the right to consult with counsel about the possibility of consenting to a search before a valid consent can be given.
- Determination of whether a person is in custody is an objective test. The question to be asked is whether a reasonable person under the same circumstances would believe that he was under arrest or not free to resist the entreaties of the police.

- The Court of Appeals concluded that a reasonable person in Friend's position would not believe that he was free to leave or to resist the entreaties of the police.
- The State failed to establish that the search in this case fell within the valid consent to search exception to the warrant requirement of the Fourth Amendment.

Third-Party Consent

Georgia v. Randolph, 126 S. Ct. 1515, 164 L.E.2d 208 (3/22/06)

- The United States Supreme Court addressed the question of whether consent to conduct a warrantless search of a residence by one occupant is valid in the face of the refusal of another occupant who is physically present at the scene.
- Earlier cases held that a fellow-occupant who shares common authority over property when the suspect is absent, may give consent. No earlier case addressed a co-occupant's consent when the second occupant was physically present and refused permission to search and later moved to suppress evidence obtained.
- The Court held that refusal by a physically present occupant, to permit a warrantless house search consented to by another occupant invalidated any search done as to the occupant who refused.
- In this case, husband's refusal was clear. Nothing in the record justified the search on grounds independent of the wife's consent. Husband's motion to suppress evidence seized should have been granted.

Starks v. State, 846 N.E.2d 673 (Ind. Ct. App. 4/27/06), *reh'g denied*, *trans denied*

- Police officer advised home owner that he was at her residence to check on her welfare. Resident indicated to the officer that she did not like what was going on in her house and that no one was living in the house except she and her grandson.
- The defendant's argument, in this case, hinged on the lack of testimony by the officer that the home owner had given him consent to search her entire house.
- A review of the record convinced the Court of Appeals that consent had been given.
- The defendant argued that he had a reasonable expectation of privacy in the basement of the aforementioned home.
- The Court concluded that Starks had standing to challenge the search of the area in which he lived in that he had a reasonable expectation of privacy in his basement living quarters.
- Consent need not be given by the subject of the search. Consent may be given by a third party who has common authority over the premises.

- Common authority rests on the mutual use of property by persons generally having joint access or control for most purposes so that it is reasonable to recognize that any of the cohabitants has the right to permit the inspection in his or her own right and the others have assumed the risk that one of their number might permit the common area to be searched.
- Based upon the facts available to the police, it was reasonable for them to believe that the primary occupant of the residence had the actual authority to consent to a search of that residence, including Starks' living quarters in the basement of the house. Starks' consent was not necessary.
- Seizure of a handgun from underneath the sofa and cocaine found in the basement where Starks lived did not violate his Fourth Amendment rights.

Lee v. State, 849 N.E.2d 602 (Ind. Sup. Ct. 6/29/06), *reh'g denied*

- The defendant conceded that the police lawfully seized sixteen video tapes brought to them by the defendant's fiancée, Melissa. The defendant argued, however, that the Fourth Amendment required the police to get a search warrant before viewing other than the two or three tapes Melissa had already viewed.
- In the present case, the fiancée shared the house where the video tapes were found with the defendant, and had full access to all rooms in that house.
- The Supreme Court concluded that Melissa had actual authority over the tapes.
- By living with Melissa and taking no steps to deny her access to the tapes, the defendant assumed the risk that Melissa would take the tapes to the police.
- Third party consent can support the warrantless seizure of evidence found. Third party consent is limited, however, by the scope of the consent given as well as any limitations on the third party's authority to give consent.
- Melissa consented to the search of the house she shared with the defendant for "video equipment and electronic devices/computer disks located in the defendant's basement studio and surrounding areas including the main floor."
- The VHS tapes seized and viewed were clearly video equipment and within the scope of the consent given.
- Persons sharing a premise may retain areas or objects within their exclusive control and therefore not subject to search based on the consent of a co-occupant.
- The Supreme Court did not accept the defendant's argument that a VHS tape was a closed container and as such not subject to third party consent.
- The Court held that in the absence of any steps by the defendant to protect the tapes from examination by Melissa, she had access to the tapes even if that access had not been previously exercised by the act of watching the tapes. Melissa had access and control because she could have watched the tapes at any time.

- Melissa's consent was sufficient to authorize the warrantless seizure and screening at all of the video tapes the police removed from the defendant's house.

AUTOMOBILE EXCEPTION

Myers v. State, 839 N.E.2d 1146 (Ind. Sup. Ct. 12/21/05)

- Relying on *Illinois v. Caballes*, the Indiana Supreme Court, in this case, held that conducting a dog sniff did not change the character of a traffic stop that was lawful at its inception and otherwise executed in a reasonable manner. The Court did note, however, that "a seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."
- The Supreme Court found that the walk-around of Myers' car was done in the course of the stop and the positive reaction of the drug dog to defendant's vehicle, especially in light of Myers' dilated pupils, extreme nervousness and the presence of heavy cologne, constituted probable cause for further investigation.
- The Supreme Court held that the auto exception does not require any additional consideration of the likelihood under the circumstances of the vehicle being driven away. "Readily mobile," the Supreme Court said, means that all operational or potentially operational motor vehicles are inherently mobile. Thus, a vehicle in temporary police control or otherwise confined is generally to be considered readily mobile and subject to a search under the auto exception, if probable cause exists to believe that the vehicle contains contraband or evidence of a crime.
- Regardless of the fact that Myers' car was temporarily confined as a result of the trooper's car parked behind it, the car was nevertheless "readily mobile," the Court said.
- The Court held that the positive dog alert to Myers' car provided probable cause that the car contained contraband and therefore the warrantless search of Myers' car was proper.

Myers v. State, 839 N.E.2d 1154 (Ind. Sup. Ct. 12/21/05)

- Defendant's vehicle was parked in his school parking lot when school authorities performed a search for illegal substances. A dog alerted on defendant's car which was found to contain a gun. The defendant argued that before school officials could walk the dog around his car they had to have a reasonable individualized suspicion that it contained an illegal substance.
- Applying *Illinois v. Caballes*, the Indiana Supreme Court reiterated that, "a dog sniff conducted during a conceitedly lawful traffic stop that reveals no information other than the location of a substance that no individual has

any right to possess does not violate the Fourth Amendment.” This applied to the defendant’s parked car.

- In the instant case, the defendant’s vehicle was subjected to a dog sniff as it sat unoccupied in the school’s parking lot. In light of *Caballes*, the Indiana Supreme Court rejected the defendant’s claim that reasonable individualized suspicion was required by the federal constitution before officials could use a trained dog to sniff the outside of the Myers’ vehicle.
- The Court concluded that the search of Myers’ vehicle was reasonable at its inception in that it was conducted only after the alert of a police narcotics dog. Furthermore, the Court said the search was reasonable in scope in that the school officials limited their search to those areas upon which the dog had alerted.

Gonser v. State, 843 N.E.2d 947 (Ind. Ct. App. 3/15/06)

- The scope of the warrantless search of an automobile is defined “by the object of the search and the places in which there is probable cause to believe that it may be found. *U.S. v. Ross* (1982).
- Probable cause to believe that a container in a vehicle contains contraband does not justify a search of the entire vehicle.
- In this case, the Court of Appeals could not determine from a review of the record whether the disputed contraband was found before or after a stolen clock was located in the vehicle. The Court concluded, therefore, that the State failed to meet its burden of showing that the auto exception applied.

Masterson v. State, 843 N.E.2d 1001 (Ind. Ct. App. 3/12/06), *trans denied*

- At issue in this case was whether the defendant’s vehicle was “readily mobile” and whether this coupled with the officer’s probable cause to believe that a search of the vehicle would uncover evidence of a crime or contraband, brought the search of the vehicle within the automobile exception.
- The Indiana Supreme Court earlier addressed the ambiguity of the phrase “readily mobile” in *Myers v. State*, 839 N.E.2d at 115.
- The Supreme Court, in *Myers*, stated that a determination of “readily mobile” does not require any additional considerations of likelihood, under the circumstances, of a vehicle being driven away.
- All operational or potentially operational motor vehicles are inherently mobile and thus a vehicle temporarily in police control or otherwise confined is still generally considered to be readily mobile.
- In the current case, the defendant’s car was clearly operational and therefore, readily mobile.
- The officers in this case had probable cause to believe the defendant’s car contained contraband or evidence of a crime. Warrantless search of that vehicle was justified under the auto exception.

- The defendant's Fourth Amendment rights were not violated.

Combs v. State, 851 N.E.2d 1053 (Ind. Ct. App. 8/14/06), *trans denied*

- The question first to be answered in this case was whether the officer who stopped the defendant had the reasonable suspicion required to effectuate his investigative stop. The Court of Appeals concluded that the deputy who made the stop had the reasonable suspicion necessary to detain Combs briefly to investigate the report of an alleged theft of gasoline from the fire department.
- The call made to 911 in this case was not anonymous. The caller was the captain of the volunteer fire department.
- The deputy obtained the defendant's identifying information and discovered that the defendant's license was suspended. The defendant's behavior made the deputy very nervous and the deputy suspected that the defendant was under the influence of methamphetamine. In addition, a drug canine alerted to the defendant's car. Combs refused to consent to a search of his vehicle and the deputy called for a tow truck and started an inventory.
- Under the facts and circumstances presented, the Court of Appeals concluded that the deputies present had probable cause to believe the defendant's vehicle contained contraband or evidence of a crime. The vehicle was readily mobile and the search was proper.

SEARCH INCIDENT TO ARREST

Gosner v. State, 843 N.E.2d 847 (Ind. Ct. App. 3/15/06)

- In order for a search incident to arrest to pass constitutional muster, the initial arrest must first be lawful. Further, the search and arrest must be contemporaneous in both place and time and the scope of a search is limited to the area within the arrestee's immediate control.
- In this case, the search did not occur contemporaneously in both time and place with the arrest and, therefore, the search did not fall within the search incident to arrest search warrant exception.

Fentress v State, ____ N.E.2d ____ (No. 84A01-0608-CR-330) (Ind. Ct. App. 3/30/07)

- Defendant argued that opening the foil ball found on his person violated his Fourth Amendment rights.
- *Terry v. Ohio*, permitted the officer in this case to remove the foil ball from the defendant's pocket, but stopped short of giving the officer the authority to open the ball.
- The analysis of this case did not end there, however.
- Search incident to arrest is an exception to the search warrant requirement of the Fourth Amendment.

- A person is considered under arrest when a police officer interrupts the freedom of the accused and restricts his liberty of movement. The fact that the officer does not inform the defendant that he is under arrest prior to the search does not invalidate the search incident to arrest exception, as long as there is probable cause to make the arrest.
- Further, the police officer's subjective belief concerning whether he had probable cause to arrest the defendant has no legal effect.
- The search incident to arrest exception allows an arresting officer to conduct a warrantless search of an arrestee's person and the area within his or her immediate control.
- In this case, the foil ball was found on Fentress' person and at the time the ball was opened there was probable cause to arrest Fentress.
- The ball was properly discovered during a *Terry* search and properly opened and examined pursuant to a search incident to arrest based on probable cause. The cocaine was properly admitted into evidence.

IMPOUND AND INVENTORY

Taylor v. State, 842 N.E.2d 327 (Ind. Sup. Ct. 2/14/06)

- A valid inventory search is a well-recognized exception to the warrant requirement of the Fourth Amendment.
- In determining the propriety of an inventory search, the threshold question is whether the impound itself was proper.
- Impoundment is warranted when it is part of "routine administrative caretaking functions" of the police or when it is authorized by statute.
- To prove a valid inventory search under the community caretaking function, the State must demonstrate the following:
 - The belief that the vehicle posed some threat or harm to the community or was itself imperiled was consistent with objective standards of sound policing.
 - The decision to combat that threat by impoundment was in keeping with established departmental routine or regulation.
- The State is justified in towing a car that is illegally parked, and the defendant did not dispute that fact.
- In this case, however, it was not clear that the defendant's car was, in fact, illegally parked. The record did not establish that the vehicle constituted a potential hazard to public safety simply because it may have been parked illegally.
- Two primary factors are to be considered in determining whether the conclusion that the parked vehicle constituted a hazard was reasonable in light of objective standards of sound policing.
 - The degree to which the property upon which the vehicle is situated is under the control of the defendant; and

- The length of time the impounding officer perceived that the impounded car would be unattended.
- The Court of Appeals concluded that Taylor could have and should have been permitted to move his car.
- The fact that Taylor's driver's license was suspended (an infraction) did not in this instance support a conclusion that the car itself was imperiled or constituted a potential hazard which an officer could reasonably believe he needed to address.
- The Court concluded that the State failed in its burden of demonstrating that the officers' belief that Taylor's vehicle posed some threat or harm to the community or was itself imperiled was consistent with objective standards of sound policing.
- Answering the impound question thusly, the Court did not address whether the impoundment in this case was consistent with established departmental routine or regulation.

Jones v. State, 856 N.E.2d 758 (Ind. Ct. App. 11/15/06), *trans denied*

- An impoundment is warranted when it is a part of routine administrative caretaking functions of the police or when it is authorized by statute.
- To prove a valid inventory search under the community caretaking function, the State must demonstrate the following:
 - The belief that the vehicle posed some threat or harm to the community or was itself imperiled was consistent with the objective standards of sound policing.
 - The decision to combat that threat by impoundment was in keeping with established departmental routine or regulation.
- *Taylor v. State*, cited above, does not require police officers to move a dangerously parked car themselves or allow the driver to contact a friend to do so.
- Although the Supreme Court did reference these options, the context of these references involved cars safely parked in parking lots or on private property, not cars parked on the paved shoulder of the highway.
- The proximity of Jones's car to fast moving traffic readily distinguished this case from the *Taylor* case.
- Further, the impoundment in this case was in keeping with established department routine or regulations, satisfying the second part of the community caretaking function test.
- In addition to the impoundment of Jones's car being warranted as part of the community caretaking function, it was also authorized by statute.
- Because the impoundment was proper, and the inventory search of Jones's car was proper, the search was deemed a valid exception to the search warrant requirement of the Fourth Amendment.

Friend v. State, 858 N.E.2d 646 (Ind. Ct. App. 12/18/06)

- Courts must examine all facts and circumstances of a case to determine the reasonableness of an inventory search.
- This examination typically encompasses two overlapping sets of circumstances:
 - The propriety of the impoundment must be established because the need for the inventory arises from the impoundment; and
 - The scope of the inventory must be evaluated.
- Where either is unreasonable, the search will not be upheld. In borderline cases, the Court said, the ultimate character of the search is often most clearly revealed when both the necessity of the impoundment and the scrupulousness of the inventorying was viewed together.
- Friend did not contest the impound of his car. But, the lawful custody of an impounded vehicle does not itself dispense with the constitutional requirement of reasonableness in regard to the searches conducted thereafter.
- To insure that a search is not a pretext for general rummaging in order to discover incriminating evidence, the State must establish that the search was conducted pursuant to standard police procedures.
- To meet its burden, the State must do more than offer a mere statement of a police officer that the search was performed as a routine inventory. The police must also indicate that the search was carried out under routine department procedures which are consistent with the protection of officers from potential danger and false claims of lost or stolen property and the protection of those arrested.
- The State clearly failed to carry its burden in this case and failed to establish that the search of Friend's car was a valid inventory search. Without the evidence recovered from Friend's car, there was not sufficient evidence to support Friend's conviction.

State v. Winkle, 859 N.E.2d 1244 (Ind. Ct. App. 1/17/07)

- In this case, there was no question but that the van searched had been reported stolen.
- To insure that an inventory search is not a pretext for general rummaging to discover incriminating evidence, the State must establish the search was conducted pursuant to standard police procedure.
- To meet this burden, the State must do more than offer a mere statement of a police officer that the search was performed as a routine inventory.
- The circumstances of intrusion must also indicate that the search was carried out under routine department procedures which are consistent with the protection of officers from potential danger and false claims of lost or stolen property as well as the protection of those arrested.
- The Court of Appeals reiterated its position that inventory searches done at impound lots by officers assigned that task are much preferred to

searches conducted at the scene, without a warrant, by the arresting officer.

- The Court found no clear department policy or procedure to mandate the opening of the locked container found in the defendant's vehicle as part of an inventory search. The search of the container, therefore, violated the Fourth Amendment rights of the defendant.

Widduck v. State, 861 N.E.2d 1267 (Ind. Ct. App. 2/28/07)

- Courts must examine all the facts and circumstances of a case to determine the reasonableness of an inventory search. This examination typically encompasses two overlapping sets of circumstances.
- First, the propriety of the impoundment must be established because the need for the inventory arises from the impoundment.
- Second the scope of the inventory must be evaluated.
- Where either is clearly unreasonable, the search will not be upheld.
- In borderline cases, the ultimate character of the search is often most clearly revealed when both the necessitousness of the impoundment and the scrupulousness of the inventorying are viewed together.
- The State must establish that the search was conducted pursuant to a standard police procedure.
- The defendant argued that the search in the instant case simply was not an inventory search because it was not necessitated by an impoundment; and therefore could not have been proper under federal or Indiana jurisprudence.
- The defendant did not challenge the propriety of impoundment, nor the scope of the search, but rather the reasonableness of the search in light of the officer's subsequent decision not to tow the vehicle.
- I.C. 9-18-2-43(a) provides that an officer who discovers a vehicle in violation of registration and license plate requirements "shall take the vehicle into the officer's custody" and "may cause the vehicle to be taken to and stored in a suitable place" until the proper registration and license plates have been procured.
- Under the facts of the instant case, the statute required the officer to take the vehicle into custody.
- Thus, impoundment was proper, and would have been preferable. Further, searches conducted at the impound lot by an officer assigned to such duties are greatly preferred to searches conducted at the scene, without a warrant, by the arresting officer.
- The touchstone of the Fourth Amendment, however, is reasonableness. Although the Court of Appeals acknowledged this case to be a "close call," the Court found the record devoid of any indicia of pretext or subterfuge for general rummaging.

- Under the particular facts and circumstances of this case, the Court could not say that the officer's subsequent decision to allow the driver to leave with the vehicle rendered the initial inventory search unreasonable. The trial court did not abuse its discretion when it admitted the crack pipe found in the defendant's car into evidence.

EXIGENT CIRCUMSTANCES

Brighan City, Utah v. Stuart et. al., 126 Sup Ct 1943, 164 L.Ed.2d 650 (5/22/06)

- The Fourth Amendment was not violated by the warrantless entry of a home by police when they had an objectively reasonable basis for believing that an occupant was seriously injured or imminently threatened with such injury.
- Officers had an objectively reasonable basis for believing both that the injured adult they observed might need help, but also that the violence they observed in the kitchen might just be beginning.
- The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.
- In this case, the Supreme Court determined that the manner of entry was reasonable, where under the circumstances, one officer announced his presence, which announcement was at least equivalent to a knock on the screen door. Once that announcement was made, the officers were free to enter.
- The police officer's action was reasonable under the Fourth Amendment regardless of the officer's state of mind, so long as the circumstances, viewed objectively, justified the action. Subjective motivation is irrelevant.
- The defendant's Fourth Amendment rights were not violated.

Trimble v. State, 842 N.E.2d 789 (Ind. Sup. Ct. 2/21/06)

- The Fourth Amendment does not protect objects, activities or statements a citizen has exposed to the plain view of outsiders because the individual has expressed no intention to keep those activities private.
- The mere fact that an area subjected to police observation is within the curtilage does not transform a warrantless observation or inspection into an unconstitutional search.
- The dog (Butchie) in the defendant's care was tied up in an open yard where anyone could see his condition. The fact that the dog was inside his doghouse at the moment the officer passed, was irrelevant, the Court determined.
- A police officer's entry onto private property and observations made while there, do not violate the Fourth Amendment when the officer has a legitimate investigatory purpose for being there and limits his entry to

places visitors would be expected to go, such as walkways, driveways, and porches.

- A determination of what areas of a given piece of real estate may reasonably be viewed as open to visitors is fact specific.
- In this case, Butchie's doghouse was only three to five feet from the driveway and sat on a direct line between the spot where the officer parked and the back door of the defendant's home.
- The Supreme Court held that, based upon these facts, the trial court could have reasonably found that the short walk from the car to the back door, although within the cartilage, was one any visitor was invited to take.
- The Court held that the defendant had no legitimate expectation of privacy in the appearance of a dog that had been tied up outside in an area readily observable by the public.

Frensemeier v. State, 849 N.E.2d 157 (Ind. Ct. App. 6/9/06), *reh'g denied*, *trans denied*

- Searches conducted without a warrant are *per se* unreasonable, subject to a few well-delineated exceptions.
- A well-recognized exception is when police have probable cause for the search and exigent circumstances exist making the securing of a warrant impractical.
- One such exigent circumstance is the presence of incriminating evidence that is in jeopardy of being destroyed or removed unless immediate action is taken.
- Taking a blood sample is an intrusion meant to be limited by the constitutional protections of the Fourth Amendment, as well as Article 1, Section 11 of the Indiana Constitution.
- In *Hannoy v. State*, 789 N.E.2d 977, 985, (2003) the Court of Appeals recognized that probable cause must exist that a driver's blood will contain evidence of alcohol or illegal substances before law enforcement officers may order the blood to be drawn and tested in the absence of consent.
- To establish probable cause to support a blood draw, the State must show that a reasonably prudent person would have believed that the facts demonstrated that evidence of alcohol impairment would be found in the blood.
- Objectively, clear indications of intoxication include dilated pupils, bloodshot and/or glassy eyes, and the odor of alcohol on the person's breath. The amount of evidence needed to supply probable cause of operating a vehicle while intoxicated is minimal.
- In this case, the blood draw was ordered only after the officer knew that the defendant had been involved in an auto accident; that his breath smelled of alcohol; that his eyes were bloodshot and only after the defendant admitted that he had been drinking.
- Although the officer might not have thought that the defendant was "really drunk," he believed alcohol may have been a factor in the accident in

which the defendant was involved. Such objective facts provided sufficient evidence to permit a reasonably prudent person to believe evidence of alcohol impairment would be found in the defendant's blood.

- The Court of Appeals was not willing to go so far as to say that the occurrence of a traffic accident coupled only with the odor of alcohol will rise to the level of probable cause in all cases. In this case, additional factors suggesting that the defendant was intoxicated were sufficient to demonstrate probable cause to order a blood draw.
- It is entirely possible, the Court concluded, that if the police had been required to get a search warrant, the defendant might no longer have been impaired or intoxicated by the time that warrant was secured.
- The record supported a finding that exigent circumstances existed in this case. The blood draw done did not violate the defendant's rights afforded under the Fourth Amendment.

Baird v. State, 854 N.E.2d 398 (Ind. Ct. App. 9/26/06), *trans denied*

- An individual may not legitimately demand privacy for activities conducted out of doors in fields, except in a home's curtilage.
- The mere fact that legitimate police investigation allows items within the curtilage to be seen does not automatically transform a warrantless observation or inspection into an unconstitutional search.
- In this case, the Court of Appeals determined that the privacy interest of the defendant in a hillside was minimal and the intrusion by law enforcement was reasonable.
- It was from the vantage point where officers had a rights to be that they made their observations. Further, the officers had consent to search.
- No violation of Fourth Amendment rights was found to exist.

State v. Crabb, 835 N.E.2d 1068 (Ind. Ct. App. 10/20/06), *trans denied*

- The smell of ether outside the apartment complex where the defendant lived, constituted exigent circumstances sufficient to allow the warrantless entry of Crabb's apartment.
- The Court of Appeals did not dispute that the combined knowledge of the fact that the manufacture of methamphetamine can be dangerous and the fact that there were people in the residence would cause any reasonable police officer to see the immediate need to remove any persons from the residence, but, acknowledged that it is a close question whether the smell of ether alone constitutes sufficient emergency to allow officers to enter a residence without a search warrant.
- The circumstances observed and known to the officer in this case, including that there was a three-year-old child in the residence, caused the troopers investigating the situation to reasonably believe a person inside was in immediate need of aid.

- The Court stated that it was not ready to draw a bright line rule which would allow officers to enter a home without a warrant based solely on the smell of ether. In this case, however, the Court found that the specific facts of the case justified warrantless entry and search of Crabb's apartment.

INDIANA CONSTITUTIONAL ANALYSIS

CONSENT

State v. Keller, 845 N.E.2d 154 (Ind. Ct. App. 4/10/06)

- The Court of Appeals determined that, in light of an ongoing murder investigation, the degree of intrusion into the hotel room searched, was minimal once consent was obtained.
- Although the method used to gain initial entry was unreasonable, the Court held that the subsequent consensual search was reasonable under Article 1, Section 11.

Miller v. State, 846 N.E.2d 1077 (Ind. Ct. App. 5/10/06), *trans denied*

- The previous holding that a police officer's detection of the strong and distinctive odor of marijuana coming from a vehicle established probable cause to search the vehicle, applied in the instant case.
- Although Miller's consent was not valid, probable cause existed to search his vehicle.
- The trial court did not err in denying the defendant's motion to suppress, because probable cause existed to satisfy both the Fourth Amendment and Article 1, Section 11.

Lee v. State, 849 N.E.2d 602 (Ind. Sup Ct. 6/29/06), *reh'g denied*

- An Indiana constitutional challenge's focus on the exclusionary rule is the "reasonableness" of police conduct.
- In this case, police reliance on the defendant's fiancée Melissa's apparent authority over the tapes removed from the defendant's house was reasonable in light of the fact that he shared his residence with her.

THIRD-PARTY CONSENT

Starks v. State, 846 N.E.2d 673 (Ind. Ct. App. 4/26/06), *reh'g denied, trans denied*

- Law enforcement officer's reliance on consent by primary resident to search of home and to search of basement area of home where defendant resided was reasonable.
- Seizure of handgun and cocaine did not violate Article 1, Section 11.

AUTOMOBILE EXCEPTION

Masterson v. State, 843 N.E.2d 1001 (Ind. Ct. App 3/21/06), *trans denied*

- To determine the reasonableness of a search, consideration must be given to both the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search.
- The reasonableness of a search or seizure of items turns on the balance of the degree of concern, suspicion or knowledge that a violation has occurred and the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities and the extent of law enforcement needs.
- Police were investigating a late night armed robbery that had just occurred. The only link to the suspect in the robbery was the vehicle searched. The police needed to quickly identify, find and apprehend a potentially armed and dangerous suspect before he fled from the area or struck again.
- The Court of Appeals concluded that an interior search of the defendant's vehicle was reasonable. Article 1, Section 11 was not violated.

IMPOUND AND INVENTORY

Taylor v. State, 842 N.E.2d 327 (Ind. Sup. Ct. 2/14/06)

- The conclusion that the impound of Taylor's vehicle was not warranted by law enforcement's administrative caretaking function supported the conclusion that the requirements of the Indiana Constitution were violated as well.
- Considering all of the facts known to the police at the moment of impound, it simply was not reasonable for them to believe that impound was consistent with objective standards of sound policing, specifically that the defendant's vehicle posed some threat or harm to the community or that the vehicle itself was imperiled.
- The State did not carry its burden under Article 1, Section 11 of the Indiana Constitution, the Supreme Court said.

Jones v. State, 856 N.E.2d 758 (Ind. Ct. App. 11/15/06), *trans denied*

- In that the defendant's vehicle was parked on the paved portion of the highway and not on a privately owned parking lot, impoundment and the resulting inventory search were reasonable and consistent with objective standards of sound policing.
- This inventory search was deemed proper under the Indiana Constitution.

State v. Winkle, 859 N.E.2d 1244 (Ind. Ct. App. 1/17/07)

- In assessing the reasonableness of a search, the Court will consider the following factors:
 - The degree of concern, suspicion or knowledge that a violation has occurred;
 - The degree of intrusion the method of the search and seizure imposes on the citizen's ordinary activities; and
 - The extent of law enforcement needs.
- The officers in this case had control of the locked box found in the defendant's vehicle and could easily have gotten a search warrant to open it.
- The Court of Appeals held that the warrantless search of the locked box found in the defendant's impounded car was unreasonable under Article 1, Section 11 or the Indiana Constitution.

EXIGENT CIRCUMSTANCES

Trimble v. State, 842 N.E.2d 798 (Ind. Sup Ct. 2/21/06)

- The degree of intrusion in the instant case was minimal. The officer entered the defendant's property through generally accessible routes. The dog the defendant was watching was pulled out of his doghouse without intruding into any enclosed area. The only item examined was the dog, Butchie.
- If a search is based upon a concerned citizen's report of an alleged crime, the degree of concern, suspicion, or knowledge that a violation has occurred is essentially the same as the reasonable suspicion required for an investigatory stop.
- The weight given the citizen's statement will be gauged by a review of the totality of the circumstances, including:
 - Whether the citizen had personally witnessed the crime;
 - Whether the police subsequently corroborated details of the report;
 - Whether the citizen identified herself and thereby subjected herself to civil liability for false reporting; and
 - The absence of circumstances calling the citizen's reliability into question.

- All of the factors in this case supported the reliability of the reported criminal activity. The officer's degree of concern that a violation had occurred was reasonable.
- Finally, the Court considered the severity of the law enforcement needs and whether they embraced the proper concern for the health and safety of others, including animals. The timely tip, in this case, concerning the possibility of a dangerous situation, diminished the privacy interest of the defendant.
- The Indiana Supreme court made it clear that it was not suggesting that the facts of this case would have justified the police entering the defendant's home, but held that Trimble's constitutional rights under the Indiana Constitution were not violated.

Frensemeier v. State, 849 N.E.2d 157 (Ind. Ct. App. 6/9/06), *reh'g denied*, *trans denied*

- The Court of Appeals reiterated the three factors to be considered in determining the reasonableness of a search.
- The degree of suspicion that the defendant drove his vehicle while intoxicated was sufficiently high enough to support a probable cause determination.
- The officer's knowledge that the defendant had been involved in an auto accident, had the odor of alcohol on his breath; had bloodshot eyes, and demonstrated slow manual dexterity all supported legitimate concern that the defendant had been driving while intoxicated.
- Law enforcement's need was great, given the desire to remove intoxicated drivers from our highways.
- Both criminal and civil sanctions were implicated and whether the defendant's BAC level established that he was impaired was essential to both components of our legal system.
- The Court of Appeals concluded, after considering the above-referenced factors, that the police officer's actions in this case were reasonable under the Indiana Constitution. The trial court properly denied Frensemeier's motion to suppress.

Baird v. State, 854 N.E.2d 398 (Ind. Ct. App. 9/26/06), *trans denied*

- The situation confronting the police in this case warranted investigation.
- The search was deemed reasonable, given the totality of the circumstances.

DRUG DOGS

Marcum v. State, 843 N.E.2d 546 (Ind. Ct. App. 2/28/06)

- In *State v. Hawkins*, 766 N.E.2d 749 (Ind. Ct. App. 2002), *trans denied*, the Court of Appeals held that when a trained and experienced police officer detects the strong and distinctive odor of burnt marijuana coming from a vehicle, the officer has probable cause to search the vehicle.
- In this case, the officer testified that he smelled a strong odor of raw marijuana. He testified that he knew what marijuana smelled like through his training.
- In the case at bar, there was more than just the smell of raw marijuana, however, justifying a search. It was the first officer's testimony, in conjunction with another officer's testimony that he smelled burnt marijuana that allowed the search of Marcum's vehicle.
- The Court declined the defendant's invitation to hold that detection of the odor of marijuana by a police officer cannot serve as probable cause for a search unless the odor is independently confirmed by a trained narcotics dog.

ENTRY ONTO PRIVATE PROPERTY

Holder v. State, 847 N.E.2d 930 (Ind. Sup. Ct. 5/18/06)

Fourth Amendment

- Searches performed by government officials without warrants are *per se* unreasonable under the Fourth Amendment. This rule is subject, however, to a few specifically established and well-delineated exceptions.
- Whether Fourth Amendment protections should be applied involved a two-part analysis:
 - Whether a person has exhibited an actual/subjective expectation of privacy; and
 - Whether that expectation is one that society is prepared to recognize as reasonable.
- A man's home is for most purposes, a place where he expects privacy. Objects, activities, or statements that he exposes to the plain view of outsiders, however, are not protected because no intention to keep them to himself has been exhibited.
- The curtilage of a home also merits Fourth Amendment protections. Curtilage is defined on a case-by-case basis.
- Factors to be considered in deciding whether an area is within the "curtilage" include: whether the area is enclosed; how it is being used; and the steps taken to keep it out of the view of the public.
- In this case, the record was not clear whether the officer encroached upon the curtilage to the defendant's home to sniff at the basement window. The smell was, however, detected from as far away as one-hundred yards.

- The answer to the question regarding “curtilage” was not required in this case, but the Court went on to say that an intrusion upon the curtilage may be permissible under the Fourth Amendment if it fits within one of the established exceptions to the warrant requirement.
- One such exception allows police to dispense with the warrant requirement in the presence of exigent circumstances. Among the exigencies that may properly excuse the warrant requirement are threats to the lives and safety of officers and others and the imminent destruction of evidence.
- Law enforcement may be excused from the warrant requirement because of exigent circumstances based on concern for safety so long as the State can prove that a delay necessitated by waiting for a warrant would gravely endanger the lives of police officers and/or others.
- In the present case, the need to find the source of an ether odor, led the police to walk across the private property of several residents in the defendant’s neighborhood and ultimately crouch near the defendant’s basement window to take a sniff. The actions of the officer were supported by the exigency of the situation.
- The defendant also argued that exigent circumstances did not justify the warrantless entry of his home after he spoke with the police outside the house.
- Before the imminent destruction of evidence can be used as the basis of exigency, the Court must demand a genuine showing of emergency before excusing the failure to get a warrant. The State must show by clear and convincing evidence that law enforcement faced circumstances making it impracticable to wait for a search warrant.
- In this case, there was no demonstration of destruction of evidence. The officer, however, entered only after learning that the occupants of the house included a young child.
- The facts supporting the police officer’s actions included: the defendant not responding to the first knock of the officer and delaying in opening the door on the second knock; the officer detecting the strong smell of ether coming from inside the house; the defendant’s admission that he had pending charges in another county for manufacturing methamphetamine; the fact that the production of methamphetamine introduces a high risk of explosion and fire; and the fact that there was a three-year-old child in the residence.
- The Court of Appeals held that an objectively reasonable belief in the immediate need to protect the public from death or serious injury supported the officer’s conclusion that exigent circumstances justified the immediate warrantless entry into the defendant’s house, notwithstanding the provisions of the Fourth Amendment.

Indiana Constitution

- The State clearly demonstrated two of the three *Litchfield* balancing factors in this case – police concern that a violation of the law had

occurred; and the extent of law enforcement need for protection of the public.

- These factors strongly outweighed the nature and extent the intrusion imposed upon the defendant.
- The Court of Appeals noted that this was not a case of the police detecting the faint odor of ether. In this case, the odor pervaded the neighborhood. The actions of the officers were deemed reasonable.
- The Court concluded that the police did not violate the illegal search and seizure provisions of Article 1, Section 11 by their actions in this case.

TRASH SEARCHES

State v. Litchfield, 849 N.E.2d 179 (Ind. Ct. App. 6/16/06) *trans denied*

- The Indiana Supreme Court held that the legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances.
- The totality of the circumstances, in a trash search case, requires consideration of both the degree of the intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the trash seizure.
- The degree of intrusion is judged by the manner in which the trash is collected. It must be retrieved in substantially the same manner as the trash collector would use.
- Evaluation of the basis upon which an officer selects a subject of a search turns on whether the officer possesses articulable individualized suspicion essentially the same as is required for a *Terry* stop.
- Allowing random searches, or searches of those individuals whom the officer hope to find in possession of incriminating evidence gives excessive discretion to engage in fishing expeditions.
- In *Litchfield I*, the Supreme court remanded the case to the trial court to decide whether under the facts of the case, the State had articulable individualized grounds for suspecting the Litchfields of illegal activity.
- On remand, the trial court found that the police had no articulable individualized grounds for suspecting the Litchfields. The trial court reasoned that the nature of the publication relied upon could be one factor which could be articulated in the development of suspicions activity, but alone, could not stand the threshold test.
- The trial court granted the defendants' motion to suppress, finding the record void of individual factors which could contribute to the development of reasonable suspicion of criminal activity in conjunction with their names appearing on the list utilized.
- On appeal, the State contended that reasonable suspicion existed in that the list had proved extremely reliable in locating people who were cultivating marijuana. The State argued that these high success rates were

sufficient to create reasonable suspicion that the defendants were growing marijuana.

- The Supreme court acknowledged that the State might be correct that the list was a good starting point, but that the list alone was not a basis for articulable suspicion.
- Like an anonymous tip, the information relied upon in this case required corroboration of criminal activity by the police officer's own observation. None of the steps developed by the State to make the list more reliable were taken in connection with the Litchfields' property.
- The Supreme Court held that the list served only as an anonymous tip, and that the police did not have articulable individualized suspicion to seize and search the Litchfields' trash. The Supreme Court affirmed the trial court's grant of the defendants' motion to suppress.

Love v. State, 842 N.E.2d 420 (Ind. Ct. App. 2/14/06)

- The legality of a search under the Indiana Constitution turns on the reasonableness of police conduct given the totality of the circumstances.
- In *Litchfield*, the Supreme Court said that a review of the totality of the circumstances requires consideration of both the degree of intrusion into the subject's ordinary activities and the basis upon which law enforcement selected the subject of the search or seizure.
- The reasonableness of a search or seizure turns on the balance of:
 - The degree of concern, suspicion or knowledge that a violation has occurred;
 - The degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and
 - The extent of law enforcement needs.
- Seizure of trash from its usual location for pick up is no intrusion at all on the owner's liberty or property interests.
- It is not reasonable, however, for law enforcement to search indiscriminately through discarded trash.
- Two requirements exist for a search of trash to be reasonable:
 - The trash must be retrieved in substantially the same manner as the trash collector would use; and
 - Law enforcement must possess a reasonable, articulable suspicion (the same as required for a *Terry* stop) for seizing the trash.
- Defendant Love did not contest that the first enumerated requirement had been met.
- The Crime Stoppers tip received by law enforcement in this case, although as anonymous call, contained independent indicia of reliability and two witnesses had seen the defendant near CVS at the time of the robbery.
- The specificity of the tip, plus the independent identification of a person matching Love's description provided the reasonable suspicion necessary to justify a search of the defendant's trash.

State v Turner, 843 N.E.2d 937 (Ind. Ct. App. 3/10/06), *reh'g denied*

- To conduct a trash pull, officers must possess an articulable individualized suspicion, essentially the same as is required for a *Terry* stop of an automobile, that the individual whose trash is to be seized is engaged in illegal activity.
- Reasonable suspicion is not readily reduced to a neat set of legal rules. Reasonable suspicion is determined by deciding whether the detaining officer, under the totality of the circumstances had a particularized and objective basis for suspecting legal wrongdoing.
- Reasonable suspicion exists when the facts known to the officer, together with the reasonable inferences arising there from would cause an ordinarily prudent person to believe criminal activity has or is about to occur
- The third-person hearsay cited in the probable cause affidavit in this case could not, as a matter of law, support a finding of reasonable articulable suspicion that Turner was or had engaged in illegal activity.
- A suggestion by unidentified sources that there might be drug dealing at a residence amounts to nothing more than a general hunch and does not rise to the level of articulable suspicion required to search trash discarded for removal.

State v. Harmon, 846 N.E.2d 1056 (Ind. Ct. App. 5/9/06), *trans denied*

- Quoting *Litchfield*, the Court of Appeals noted that while the seizure of trash in its usual location for pickup is no intrusion on an owner's liberty or property interests, it is not reasonable for law enforcement to search indiscriminately through people's trash.
- Further, the Court in this case noted that the Supreme Court in *Litchfield* had concluded that the search of trash recovered from the place where it is left for collection is permissible under the Indiana Constitution only if the investigating officers had an articulable basis justifying reasonable suspicion that the subject of the search had engaged in violation of the law that might reasonably lead to evidence in the trash.
- In order for a search of trash to be legal the following must be true:
 - The trash must be retrieved in substantially the same manner as the trash collector would use; and
 - The officer must possess a reasonable, articulable suspicion essentially the same as is required for a *Terry* stop of an automobile.
- In that *Litchfield* was not available as the precedent when Harmon's trash was taken, the State's good faith argument was well taken, the Court concluded. The Court found that the search of Harmon's trash was done in a manner consistent with applicable case law at the time. In that the officer relied in good faith upon a valid search warrant based upon the

search of the defendant's trash in reliance on *Moran v. State*, 644 N.E.2d 536 (Ind. 1994), the Court of Appeals held that the trial court erred in granting Harmon's motion to suppress.

Richardson v. State, 848 N.E.2d 1097 (Ind. Ct. App. 6/12/06), *trans denied*

- Richardson's trash service collected the garbage bags in question in this case. Thus, the first requirement set forth in *Litchfield* was satisfied.
- Further, however, for a search of trash to be permissible, the officer must possess reasonable suspicion, the same as required for a *Terry* stop of an automobile in seizing trash.
- In this case, the reasonable suspicion that the troopers may have had that the Richardsons were involved in criminal activity would have originated with the information given to one of the troopers by an anonymous tipster.
- As a general rule, an anonymous tip alone is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop.
- In this case, the Court of Appeals determined that the actions of the police officer did not meet the two-part standard outlined in *Sellmer*, cited above in anonymous tip section of outline. The tip provided information regarding where the Richardson's resided and that Mr. Richardson had a suspended driver's license, a fact that was later verified independently by the trooper.
- The tip, however, failed to provide the trooper with several important pieces of information, including the basis for the caller's knowledge or any information detailing future acts of the Richardsons that would demonstrate the caller's intimate knowledge of the suspects' activities and provide officers with tools with which to verify the tip's dependability.
- The tip, by itself and without further police corroboration was not sufficiently detailed in predicting the Richardsons' future actions to justify indiscriminately searching the trash.
- Under *Litchfield*, the Court found that the items found in the trash were not properly discovered evidence.
- Again, in this case, the Court of Appeals held, however, that the search of the Richardsons' trash was not unreasonable in light of the law at the time of the trash pull. The trial court's denial of the motion to suppress was affirmed.

Edwards v. State, 832 N.E.2d 1072 (Ind. Ct. App. 8/17/06)

- There was no dispute that the defendant's trash was placed along the street for pickup by trash collectors.
- The question remained, however, whether the officers who took the defendant's trash had the reasonable suspicion necessary to justify seizure of that trash.

- Any information given to the detective in this case came from a confidential informant and was then relayed to the detective in charge of the trash seizure.
- The tip did not indicate that Edwards was going to commit a specific impending crime. Nor did the tip provide information which could be corroborated by the police officers.
- Of most importance in determining the legality of the trash search in this case was the fact that the credibility of the confidential informant was never established at any time during the proceedings.
- The tip, therefore, was lacking in indicia of reliability and the credibility of the informant was not established. The tip was inadequate to support the reasonable suspicion necessary under *Litchfield* to search Edward's trash.
- At the time this particular case was decided, however, a different test for the search of trash applied. *Moran v. State*, 544 N.E.2d 536, 541 (Ind. 1994).
- Consequently, according to the good faith exception, the evidence taken in this case could not have been properly excluded and could provide support for finding probable cause to issue a warrant.

State v. Cook, 853 N.E.2d 483 (Ind. Ct. App. 8/25/06)

- The Court of Appeals concluded that the facts in this case compelled the same result reached in *Litchfield*.
- Although the State argued that the seizure of the defendant's trash was supported by reasonable suspicion because the police based their decision to seize the trash on a list that had proved extremely reliable in locating people who were cultivating marijuana, the Court held otherwise.
- The search of the defendant's trash was held to be unreasonable.

Eshelman v. State, 859 N.E.2d 744 (Ind. Ct. App. 1/10/07)

- *Litchfield* was decided about two months after Defendant Eshelman's trash was searched.
- The Court of Appeals stated that reasonable suspicion is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence, but still does require at least a minimal level of objective justification and requires more than a hunch.
- In determining whether reasonable suspicion exists, the Court will examine the totality of the circumstances to see whether the detaining officer had a particularized and objective basis for suspecting legal wrongdoing.
- The reasonableness of a search or seizure turns on the balance of:
 - The degree of concern, suspicion, or knowledge that a violation has occurred; and
 - The degree of intrusion the method of the search or

- seizure imposes on the citizen's ordinary activities; and
- The extent of law enforcement needs.
- Arguably, in this case the police were not required to comply with *Litchfield* due to the timing of that decision and the search in this case.
- The Court of Appeals held that the search of trash in this case was justified in that there was no reason to doubt the jail inmate's veracity. Further, the inmate had been talked to by the officer face-to-face, and there was no indication that the inmate received any benefit from his conversation with the trooper. The statements of the inmate were corroborated by the trooper learning from a deputy that the defendant was manufacturing methamphetamine.
- The trash search in this case was reasonable under either pre or post-*Litchfield* principles. The search warrant in this case was properly issued. The denial of the defendant's motion to suppress was affirmed.

MISCELLANEOUS ISSUES

SUSPICIONLESS SEARCH OF PAROLEE

Samson v. California, 126 S. Ct. 2193, 165 L.Ed.2d 250 (6/19/06)

- The suspicionless search of a person on parole was held reasonable and not a violation of Fourth Amendment rights in this case decided by the U.S. Supreme Court in June, 2006.
- California State law required every state prisoner eligible for release on parole to agree in writing to be subject to search or seizure by a parole or peace officer with or without a search warrant and with or without cause solely on the basis of the parolee's status.
- The State's interest in supervising parolees was substantial, the Court concluded. Parolees have severely diminished expectations of privacy by virtue of their status alone.
- The Court cited to *U.S. v. Knights* (Sup. Ct. 2001) which held that the reasonableness of searching a probationer required balance of the probationer's privacy interest and promotion of legitimate governmental interests. The reasonableness of a search solely predicated upon a probation condition was not addressed in *Knights*.
- Parolees have fewer expectations of privacy than probationers, the Court concluded.
- Under the totality of the circumstances, Samson did not have a legitimate expectation of privacy that society would recognize as legitimate.
- The Court held that the Fourth Amendment did not prohibit a police officer from conducting a suspicionless search of a parolee under the authority of California statute.

ABANDONED PROPERTY No Fourth Amendment Protection

Ross v State, 844 N.E.2d 537 (Ind. Ct. App. 3/28/06)

- Abandoned property is not subject to Fourth Amendment protection.
- Only when property is abandoned after a citizen has been improperly detained is it not admissible.
- In this case, Ross was properly stopped and arrested. The dropped rock of cocaine was seized by the police, before the officer actually detained or arrested Ross.
- The abandoned cocaine was appropriately seized by the police. The trial court did not err in denying the defendant's motion to suppress.

UNIFORM AND BADGE OR MARKED CAR REQUIRED TO MAKE TRAFFIC STOP I.C. 9-30-2-2

Maynard v. State, 859 N.E.2d 272 (Ind. Ct. App. 1/18/07), *trans. denied*

- I.C. 9-30-2-2 provides that a law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city or town regulating the use and operation of a motor vehicle unless at the time of the arrest the officer is...
 - wearing a distinctive uniform and badge of authority; or
 - operating a motor vehicle that is clearly marked as a police vehicle.
- In this case, the town marshall was not in uniform, did not have his badge, and was not in a marked car. Further, however, the marshall at no time attempted to stop the defendant or present him personally with a summons or traffic ticket. Instead, the marshall invoked the help of the State to file charges and arrest the defendant.
- The Court of Appeals held that I.C. 9-30-2-2 did not apply in this circumstance.
- The purpose of 9-30-2-2 is to protect both citizens and police officers from harm during an encounter where the officer is attempting to use his authority over a citizen to arrest, stop or issue a summons.
- The court rejected the defendant's invitation to construe the word "issue" to mean that each time an officer writes a probable cause affidavit and issues a summons, the officer must be in uniform with a badge, regardless of contact between the officer and citizen.
- The Court of Appeals concluded in this case that the town marshall did not violate I.C. 9-30-2-2. The defendant's motion to dismiss was properly denied.

Davis v. State, 858 N.E.2d 168 (Ind. Ct. App 12/11/06)

- One of the issues presented on appeal of the trial court's denial of the defendant's motion to suppress, was whether the officer who stopped/detained the car in which the defendant was riding had authority to do so after the driver failed to signal a turn.
- I.C. 9-30-2-2 requires that in order for an officer to make an arrest or issue a traffic information or summons for violation of the law regulating operation of a motor vehicle, the officer must be either wearing a uniform and badge, or driving a clearly marked police vehicle.
- In this case, the officer donned a dark hooded sweatshirt, jeans, and a vest that said "POLICE." He wore a badge on his shoulder and drove a truck. The vest did not bear his name, nor the letters IPD, nor a logo of his department.
- The Court of Appeals concluded that the officer's attire was not a uniform for purposes of stopping someone for violating Indiana law regulating operation of a motor vehicle.
- The Court found that the officer was precluded from conducting a traffic stop and effectuating either an arrest or simply an investigatory stop based on his lack of uniform and marked police car.

KNOCK AND TALK PLAIN VIEW

Redden v. State, 850 N.E.2d 451 (Ind. Ct. App. 7/12/06), *trans denied*

- A knock and talk investigation "involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint and eventually requesting permission to search." *Hayes v. State*, 794 N.E.2d 492 (Ind. Ct. App. 2003).
- Such knock and talks do not *per se* violate the Fourth Amendment.
- In the course of their official business, police are permitted to approach one's dwelling and seek permission to question an occupant.
- Only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of the citizen may we conclude a seizure has occurred.
- A seizure occurs when taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.
- Under the totality of the circumstances, the Court of Appeals could not say that a reasonable person would have felt that he was not at liberty to ignore the police presence and go about his business in this case.
- Thus, no Fourth Amendment violation occurred as a result of the knock and talk investigation described.

- As a general rule, the plain view doctrine allows a police officer to seize items when he inadvertently discovers items of readily apparent criminality while rightfully occupying a particular location.
- Historically, the curtilage of a home was considered within the purview of the Fourth Amendment. There is, however, no Fourth Amendment protection for activities or items that, even within the curtilage, are knowingly exposed to the public.
- The officer in this case could not knock on the defendant's front door in that it was inaccessible due to junk and clutter. The officer knocked on the back door. The officer smelled a strong chemical odor coming from the house when the defendant answered the door and saw muriatic acid on the porch and pill soak as he stepped off the porch.
- The officers had a legitimate investigative basis for being on the defendant's property and limited their entry to places visitors would be expected to go. The muriatic acid and pill soak were in plain view.
- The Court of Appeals concluded that no violation of the Fourth Amendment or the Indiana Constitution had occurred.

FORCE TO RECOVER EVIDENCE

Grier v. State, 855 N.E.2d 1043 (Ind. Ct. App. 10/31/06), *trans. granted* (2/22/07)

- The U.S. Supreme Court has created a balancing test for determining the reasonableness of a body search. In making that reasonableness determination, the court is to consider:
 - The extent to which the search method used may threaten the safety and health of the individual;
 - The extent of intrusion upon the person's dignitary interests in personal privacy and bodily integrity; and
 - The community's interest in fairly and accurately determining guilt or innocence.
- The officer in this case applied pressure to the defendant's neck for about fifteen seconds to prevent him from swallowing a baggie containing suspected drugs. There was no evidence that the defendant's airway was blocked or that he was being choked.
- The threat of harm to the defendant as a result of the officer's actions was insignificant in comparison to the potential risk of ingesting cocaine.
- Intrusion upon the dignitary interests and bodily integrity of the defendant were minimal.
- The officer acted in the community's interest to preserve evidence necessary to determine the defendant's guilt or innocence.
- Grier argued that the trial court's holding in *Conwell v. State*, 714 N.E.2d 764 (Ind. Ct. App. 1999) made it unreasonable *per se* under the Fourth Amendment for a police officer to apply pressure to a defendant's throat to prevent him from swallowing suspected contraband. The Court of

- Appeals did not agree although acknowledging that it may be difficult to determine on a case by case basis what makes a chokehold reasonable.
- The Court held that the officer's search in this case was reasonable under the totality of the circumstances and did not, therefore, violate the defendant's rights under Article 1, Section 11 of the Indiana Constitution.

SCHOOL SEARCHES

T.S. v. State, ___ N.E.2d ___ (No. 49A02-0603-JV-268) (Ind. Ct. App. 3/27/07)

- The Court held that an Indiana Public Schools Police Officer acted to further educationally related goals, and therefore the reasonableness standard of *New Jersey v. T.L.O.* (U.S. Sup. Ct. 1985) was to be applied.
- The Court concluded that the officer's encounter with T.S. constituted a seizure and implicated the Fourth Amendment, but that the seizure of T.S. was reasonable.
- The Court also held that the seizure of T.S. was reasonable under the Indiana Constitution.
- The trial court properly admitted the evidence seized.